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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 HERB CARTER,

9 Plaintiff,

10 v.

11 JOHN DEAL, et al.,

12 Defendants.
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CASE NO. C11-5604BHS

ORDER DENYING MOTION FOR
JUDGMENT ON PLEADINGS

14 This matter comes before the Court on Defendants John Deal and Hodgson &
15 Sons, Inc.'s (the "moving Defendants") motion for judgment on the pleadings (Dkt. 16).
16 The Court has considered the pleadings filed in support of and in opposition to the
17 motion and the remainder of the file and hereby denies the motion for the reasons stated
18 herein.

19 **I. PROCEDURAL HISTORY**

20 On August 9, 2011, Plaintiff Herb Carter ("Carter") filed the complaint in this
21 action against Defendants. Dkt. 1. Carter's claims arise out of a motor vehicle accident
22 that occurred on August 31, 2009 in Grangeville County, Idaho. *Id.*

1 On October 20, 2011, the moving Defendants filed a motion for judgment on the
2 pleadings for lack of subject matter jurisdiction due to lack of complete diversity of
3 citizenship of the parties. Dkt. 16. On October 26, 2011, Defendants David Randall and
4 “Jane Doe” Randall (the “Randall Defendants”) filed a motion joining in the moving
5 Defendants’ motion. Dkt. 17. On November 10, 2011, Carter filed a response in
6 opposition to the motion seeking voluntary dismissal of the Randall Defendants and leave
7 to amend his complaint. Dkt. 18. On November 16, 2011, the moving Defendants
8 replied (Dkt. 20) and Carter filed a “strict” reply thereto (Dkt. 21).

9 II. FACTUAL BACKGROUND

10 On August 31, 2009, Carter was a passenger in a vehicle driven by Defendant
11 David Randall traveling on a gravel road in Grangeville County, Idaho. Dkt. 1. At
12 approximately the same time, a dump truck, driven by Defendant John Deal, was
13 traveling on the same road in the opposite direction. *Id.* According to Carter’s
14 complaint, the two vehicles almost collided head-on, forcing Defendant David Randall to
15 swerve and drive off the road, resulting in severe injuries to Carter. *Id.*

16 Carter alleges his injuries were the result of negligence of Defendants John Deal
17 and David Randall. *Id.*

18 III. DISCUSSION

19 Moving Defendants seek judgment on the pleadings for lack of subject matter
20 jurisdiction based on the lack of complete diversity of citizenship between the parties as
21 Carter and the Randall Defendants are all citizens of the state of Washington. Dkt. 16.
22 Carter seeks to dismiss the Randall Defendants as parties, leave to amend his complaint

1 to reflect their dismissal, and denial of moving Defendants' motion. Dkt. 18. The
2 moving Defendants allege that David Randall is an indispensable party to the action and
3 therefore cannot be dismissed to cure jurisdictional issues. Dkt. 20. The moving
4 Defendants state that "[u]nder Idaho law, the dismissal of defendant David Randall will
5 result in [Carter] only being able to collect damages determined by a jury from [the
6 moving Defendants], as liability is several pursuant to IC 6-803." *Id.* at 3. Therefore,
7 according to the moving Defendants, by dismissing David Randall, Carter "is prejudicing
8 his own claim by not being able to collect fault allocated to defendant David Randall."
9 *Id.* Carter maintains that David Randall is not an indispensable party, or even a necessary
10 party, and therefore, can be dismissed for jurisdictional purposes. Dkt. 21.

11 Rule 19(a) of the Federal Rules of Civil Procedure governs who is a required, or
12 necessary, party to a lawsuit. If a party is found to be necessary, Rule 19(b) instructs
13 courts to determine if an action should continue when joinder of a required party is not
14 feasible. Fed. R. Civ. P. 19(b). The United States Supreme Court, in *Temple v. Synthese*
15 *Corp.*, 498 U.S. 5, 7 (1990), specifically stated that "[i]t has long been the rule that it is
16 not necessary for all joint tortfeasors to be named as defendants in a single lawsuit."

17 Here, the Court concludes that the Randall Defendants are not necessary parties to
18 the lawsuit under Rule 19(a) and accordingly, Carter is free to dismiss them from his
19 lawsuit to cure jurisdictional issues. Under Idaho law, liability in this action is several,
20 rather than joint and several, (*see* I.C. § 6-803). Therefore, the moving Defendants are
21 not prejudiced in any way by having the Randall Defendants dismissed from this suit.
22 Moreover, even if joint and several liability were available, the Supreme Court has

1 specifically stated that typical joint tortfeasors are not indispensable, or even necessary,
2 parties to a lawsuit. *Temple*, 498 U.S. at 7.

3 **IV. ORDER**

4 Therefore, it is hereby **ORDERED** that the moving Defendants' motion for
5 judgment on the pleadings (Dkt. 16) is **DENIED** and Carter's request for leave to amend
6 his complaint to reflect dismissal of the Randall Defendants is **GRANTED**.

7 Dated this 19th day of December, 2011.

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10 BENJAMIN H. SETTLE
11 United States District Judge
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